IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.62 OF 2007
IN
SUMMARY SUIT NO.2065 OF 2006

Uday Jayantilal Shah. ...Plaintiff.
Vs.
Evergreen Drums & Cans P. Ltd. ...Defendant.
....
Mr. Jayant B. Kocheta for the Plaintiff.
Mr.S. U. Pandey for the Defendant.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The claim in the suit under Order 37 of the Code of Civil Procedure, 1908 arises out of an agreement dated 3rd March 2005 by which the Plaintiff was to procure orders for the Defendant and to receive a commission at the rate of Rs. 1.20 per can. It has not been disputed that the agreement was executed on behalf of the Plaintiff and the Defendant.

Three bills were raised by the Plaintiff in the amounts of Rs.2,62,560/-, Rs. 2,58,000/- and Rs.1,08,000/-, Exh.Q to the plaint read with Exhs. B, C & D. The first of the bills was paid. In respect of the second bill, part payment of Rs.1 lakh was made,

while the entire amount of the third bill remained due and outstanding.

The main defence that has been urged is that the relevant Sales Tax Forms H/C were not supplied to the Defendant. On behalf of the Plaintiff it has been submitted that the aforesaid defence has come for the first time in the affidavit in reply and was not raised in reply to the notice of demand. At the same time, it has been urged on behalf of the Plaintiff that should the Defendant be in a position to point out the specific consignment in respect of which the relevant form has not been issued, the Plaintiff would be in a position to provide the same. There is merit in the submission that the defence in the reply is vague and appears to be in the nature of an afterthought. Be that as it may, in the interests of justice it would, in my view, be appropriate to grant leave to the Defendant to defend the suit, conditional on a deposit of Rs.1,30,000/- in this court within 8 weeks from today. There shall be an order accordingly. Upon the deposit being made, the Defendant would be at liberty to file a Written Statement within 8 weeks.

Upon deposit, the amount shall be invested in a fixed

deposit of a Nationalized Bank to be renewed periodically during the pendency of the suit.

The Summons for Judgment is accordingly disposed of.

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